

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7393 of 1992

WITH

SPECIAL CIVIL APPLICATION No 7651 of 1994

TO

SPECIAL CIVIL APPLICATION No 7661 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DAHYABHAI VIRABHAI DAMALIA & ORS.

Versus

STATE OF GUJARAT & ORS.

Appearance:

In all Special Civil Applications:

MR JJ YAJNIK for Petitioners

MR HL JANI for Respondent No. 1 & 2

MS SEJAL K MANDAVIA for Respondent No. 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/04/97

ORAL JUDGMENT

The petitioners in these Special Civil Applications, filed a joint Special Civil Application No.7393 of 1992. This Court has considered the Special

Civil Application No.7393 of 1992 to be filed only on behalf of petitioner No.1 and rest of the petitioners were directed to file one page petition each and that is how the other petitions have been filed before this Court. So these petitions are being disposed of by this common order. The facts are taken from Special Civil Application No.7393 of 1992.

2. The petitioners were engaged by the respondent-Dalwada Gram Panchayat, Una, Junagadh, as clerks, peons, wiremen, drivers, mali, safai kamdars, etc. The service particulars of the petitioners are given in Annexure A at page No.13 of the Special Civil Application. The prayer has been made by the petitioners for issuance of directions to respondents to initially fix the pay scales and allowances and other service conditions, including grant of House Rent Allowance, C.L.A., leave benefits etc. and to give them benefits of such of the accepted recommendations of Sarela Pay Commission and then the Desai Pay Commission in the said matter as were extended to other employees in the equivalent posts, with effect from 1.1.73 and to give them arrears of salary and allowances accordingly.

3. The writ petition has been contested by the respondent-Gram Panchayat by filing reply to the Special Civil Application. The respondent has raised a preliminary objection with regard to maintainability of the Special Civil Application. The objection is that the petitioners have simultaneously raised Industrial Dispute before the Labour Court, Rajkot, in Ref. LCR No.31 of 1981, which came to be transferred to the Labour Court, Junagadh, vide LCA No.1/90 and that reference has been allowed by the Labour Court under the Award dated 29.1.94 in the similar subject matter. When the petitioners have availed of the alternative remedy, the Special Civil Application is not maintainable. Another preliminary objection has been raised that the petitioners have not disclosed the fact of filing Industrial Dispute in the Labour Court and as such, this petition deserves to be dismissed on the ground of concealment of material face. On merits, the learned counsel for the respondent submitted that the financial condition of the Gram Panchayat is very poor and it cannot shoulder the responsibility of heavy financial burden by giving the petitioners, the pay scale as prayed and by giving further benefits of revision of pay scale. The respondent filed further reply, in which it has been contended that Saurashtra Majdoor Sangh has raised Industrial dispute before the Labour Court which was numbered as LCR No.31 of 1981. In the said case

compromise has taken place between the parties and all demands were satisfied by the Panchayat except pay fixation and dearness allowance. The first Award was pronounced on 21.4.82 but this fact has not been disclosed by the petitioners. Thereafter again a second reference has been filed by the same Sangh for giving them pay as per Desai Pay Commission being Reference No.1/90 and decided on 29th January 1994. This fact has been disclosed by the respondent in the earlier reply also. The order of the Labour Court in Reference No.1/90 dated 29.1.94 has been challenged by the Panchayat by filing Special Civil Application before this Court but that Special Civil Application has been rejected against which Letters Patent Appeal has been filed which is pending. The respondent has stated that the petitioners have concealed very important fact from this Court. The Award of the Labour Court made in favour of the petitioners was not implemented, therefore the petitioners have preferred Contempt Petition No.164 of 1995 and the same has been rejected. This fact has also been concealed.

4. The learned counsel for the petitioners has admitted all these facts. He further admitted that he has filed the Contempt Petition on behalf of the petitioners before this Court. The only submission has been made that the Award has not been implemented and secondly the recommendations of the fourth pay commission was not the subject matter of dispute before the Labour Court. I do not find any merits in the justification furnished by the learned counsel for the petitioners for non disclosure of facts of raising industrial dispute in respect of the claims made in the Special Civil Application. It is a case where two parallel remedies have been simultaneously availed by the petitioners. The day on which the Special Civil Application has been filed by the petitioners, the dispute was pending before the Labour Court for adjudication. So, it is not the case where there was an alternative remedy available to the petitioners, but it is a case where the petitioners have availed the alternative remedy and ultimately a decision has been given therein in their favour. This writ petition deserves to be dismissed only the grounds, firstly, that the petitioners have an alternative remedy and secondly, they have also availed of the said remedy and the decision has been given in their favour. It is not in dispute that reference was pertaining to giving benefit to the petitioners of the pay scale and the revised pay scale. That claim of the petitioners has been accepted though the matter is sub-judice before this Court in Letters Patent Appeal. The justification

furnished by the petitioners' counsel that the claim for revision of pay as per the fourth pay commission was not the subject matter of Industrial Dispute is hardly of any substance. It is only a consequential relief which has to be given to the petitioners on acceptance of their claim by revision of their pay scale. In this respect, reference may have to the decision of Apex Court in the case of Bombay Metropolitan Region Development Authority, Bombay v. Gokak Patel Volkart Ltd. & Ors., reported in JT 1995(1) SC 155. Otherwise also, the petitioners have candidly not disclosed all the material facts in the petition. The Union has taken up the matter in reference and the same was pending and as such, the petitioners have no right to file this Special Civil Application. The petitioners should have disclosed this fact and non disclosure of this material fact disentitle them from seeking any relief from this Court on merits of the matter. Otherwise also, as stated earlier, the petitioners could not have availed of two remedies simultaneously. When two remedies were available, the petitioners should have contended and felt satisfied by the remedy which has been availed first. Otherwise also, the claim of the petitioners made in the Special Civil Application has been granted by the Labour Court and the Sp.C.A. filed by the respondent has also been dismissed. The learned counsel for the petitioners has tried to justify the filing of Special Civil Application on the ground that the Award of the Labour Court has not been implemented. That ground is of no substance on merits. This Court will not act as an Executing Court of the Award of the Labour Court. Under the Industrial Disputes Act, 1947, sufficient remedy is provided for execution of the Award passed by the Labour Court and instead of approaching this Court, the petitioners should have resorted to the remedies available for execution of the Award passed by the Labour Court. An attempt has been made by the petitioners to get the Award executed by filing Contempt Petition, but that has also been dismissed. So the aforesaid justification given for filing this Special Civil Application also cannot be accepted.

5. In the result, all these Special Civil Applications fail and the same are dismissed. Rule discharged. Interim relief, if any, granted by this Court, stands vacated. No order as to costs.

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